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6 | Attorneys for the Herndon Parties

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Case No. 19-30088 (Jointly Administered)

Chapter 11

**OBJECTION TO DEBTORS' MOTION
PURSUANT TO 11 U.S.C. §§ 105(a) AND
502(c) FOR THE ESTABLISHMENT OF
WILDFIRE CLAIMS ESTIMATION
PROCEDURES**

Hearing Date and Time:

Date: August 14, 2019

Time: 9:30 a.m. (Pacific Time)

Place: Courtroom 17

450 Golden Gate Ave., 16th Floor
San Francisco, CA 94102

17 | Affects:

- PG&E Corporation
- Pacific Gas & Electric Company
- Both Debtors

1 David Herndon, Julia Herndon, Gabriell Herndon, Jedidiah Herndon, Estefania Miranda,
2 Steven Jones, Gabriella's Eatery, Chico Rent-a-Fence, and Ponderosa Pest & Weed Control (the
3 "Herndon Parties") respectfully submit this response to the Debtors' Motion Pursuant to 11 U.S.C.
4 §§ 105(a) and 502(c) for the Establishment of Wildfire Claims Estimation Procedures (the
5 "Motion") brought by PG&E Corporation and Pacific Gas & Electric Company (collectively the
6 "Debtors"), and in support thereof, represent as follows:

7 The Herndon Parties anticipate that the Official Committee of Tort Claimants (the "Tort
8 Committee") likely will address various issues raised by the Motion, including: 1) the Debtors'
9 skewed framing of the issue of inverse condemnation; 2) the propriety of resolving liability for the
10 Tubbs Fire in this Court; and 3) the expedited schedule that does not allow sufficient time to
11 determine the Debtors' liability under theories other than inverse condemnation. While the Herndon
12 Parties are not addressing those issues herein, the Herndon Parties reserve the right to join in the
13 objection of the Tort Committee, and the Herndon Parties anticipate that they will do so.

14 In addition to the above-referenced issues, the Herndon Parties' primary concern is that the
15 estimation procedures do not provide for or acknowledge the possibility that this Court will
16 authorize the filing of class proofs of claim. As this Court is aware, the Herndon Parties previously
17 objected to the Debtors' proposed order setting a bar date on the basis that it appeared to preclude
18 the possibility of class claims. At the hearing on the bar date motion, Debtors' counsel assured this
19 Court that the proposed bar date order "does not pre-judge whether or not a class proof of claim can
20 be filed." *Id.* at 102:1-2. This Court agreed that the issue of the propriety of class proofs of claim
21 for wildfire creditors is "an open question." *Id.* at 104:9-16. To date, no party has filed a motion
22 pursuant to Federal Rule of Bankruptcy Procedure 9014 to seek permission to file class proofs of
23 claim, and the issue remains "an open question." However, the Herndon Parties reserve the right to
24 do so, and if such motion is approved, the estimation procedures will need to provide for estimation
25 of such claims.

26 The Motion requires that the third phase of the estimation proceedings – the damages
27 estimation phase – begin "after the October 21, 2019, Bar Date so that all stakeholders would have
28 knowledge of the number of claimants and the aggregate amount of alleged claims in these

1 proceedings.” Mot. at 7. Because “liquidating each of the tens of thousands of individual claims
2 one by one during the course of these Chapter 11 Cases would be impossible without undermining
3 the objective of paying victims promptly and fairly,” *id.* at 3, “the aggregate estimate of overall
4 damages” will be “based upon sampling of claims and expert testimony.” *Id.* at 8. The Herndon
5 Parties do not object to estimation, for at least certain purposes. However, such estimation should
6 include the claims of absent class members that are covered by a class proof of claim.

7 The use of an estimation procedure is appropriate for class proofs of claim. Any concern
8 that “allowing class proofs of claim will lead to inexpeditious resolution of claims . . . is not well-
9 founded.” *In re Charter Co.*, 876 F.2d 866, 872 (11th Cir. 1989). *See also In re Chateaugay Corp.*,
10 104 B.R. 626, 633 (S.D.N.Y. 1989) (finding that “there is no reason to think that permitting the filing
11 of class claims will cause special delay or uncertainty in settling the debtor’s estate”). “The
12 bankruptcy courts are well used to the estimation procedures outside the class action context, even
13 in highly complex cases,” and “[t]here is no reason to expect that the experience of the bankruptcy
14 courts would be different when dealing with class claims.” *In re Charter*, 876 F.2d at 872-73.
15 “[B]ankruptcy courts are experienced in” the “expeditious estimation of unliquidated contingent
16 claims such as the class claims made in the case at hand.” *In re Chateaugay*, 104 B.R. at 633.
17 Accordingly, the use of an estimation proceeding is appropriate for class proofs of claim here. *See,*
18 *e.g.*, *In re Hoffinger Indus., Inc.*, 307 B.R. 112, 121 (Bankr. E.D. Ark. 2004) (finding that “it is
19 appropriate to estimate this class for purposes of plan voting and determining feasibility”).

20 Accordingly, the Herndon Parties respectfully request that this Court sustain the objections
21 of the TCC, clarify that any proposed claims estimation procedures explicitly allow for the
22 estimation of class proofs of claim if such class proofs of claim are ultimately allowed, and grant
23 such further relief as this Court deems proper.

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[Signatures to Follow]

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1 Dated: August 7, 2019
2 Los Angeles, CA

/s/ Thomas D. Warren

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